

COMPLIANCE BOARD OPINION NO. 01-6
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March 20, 2001

Mr. John W. Cole

The Open Meetings Compliance Board has considered your complaint that the Board of Education for Caroline County (hereafter “County Board”) may have violated the Open Meetings Act during a meeting held on April 11, 2000. Specifically, you alleged that a violation may have occurred as a result of a nonpublic discussion concerning the school system’s decision on whether to release certain information to a committee charged with evaluating the school system. For the reasons explained below, we find that the County Board did not hold an unlawfully closed meeting in connection with this matter.

I

Background

As we understand it, the Performance Audit Subcommittee, part of an ad hoc Education Study Commission appointed by the Board of County Commissioners to evaluate the Caroline County school system, requested a significant amount of information from the school system in connection with its review. Although the school system apparently cooperated with the subcommittee initially, in a letter dated April 12, 2000, the Superintendent of Schools notified the chairman of the subcommittee that certain additional information would not be provided. The Superintendent’s justification, at least in part, was that the subcommittee’s investigation was inconsistent with provisions governing performance audits under the State Education Law. See letters from Dr. Larry L. Lorton, Superintendent of Schools, to Walter B. Palmer, III, Chairman of the Performance Audit Subcommittee, dated April 12 and July 11, 2000.

On May 2, 2000, Joseph Quinn, Chairman of the Education Study Commission, appeared before the County Board to inquire about the process by which the school system decided to discontinue working with the subcommittee. Although no answer was provided during that meeting, the Superintendent responded in a letter dated July 11 that the County Board had not approved his earlier letter. In the Superintendent’s view, the response to the subcommittee’s request was appropriately issued by the Superintendent rather than by the County Board.

II

Complaint and Response

On July 17, 2000, you wrote to the Open Meetings Compliance Board, indicating that it was your understanding that the County Board discussed the subcommittee's request and the school system's response at its April 11 meeting. You indicated that "all or part of this took place in closed session, which ... may be a contravention of the Open Meetings Act, in terms of both the process used to close the meeting and the actual content of the meeting."¹

In a response on behalf of the County Board, William W. McAllister, Jr., Esquire, denied that the County Board violated the Open Meetings Act at its meeting on April 11, 2000.² Mr. McAllister set forth the procedures followed in connection with the meeting. In support of his response, he provided evidence documenting the manner in which notice of the meeting was provided and the process by which the County Board closed the meeting. With regard to the substance of the meeting, Mr. McAllister denied that there was any discussion concerning the Superintendent's response to the subcommittee's request. In support of his position, Mr. McAllister provided a copy of the County Board's minutes for the meeting in question.³

III

Analysis

Based on the information before us, we conclude that the County Board did not discuss the Superintendent's response to the Performance Audit Subcommittee at its meeting April 11, 2000. Therefore, we find that the County Board did not

¹ Although your complaint was dated July 17, 2000, the original was never received by the Compliance Board. A copy of the complaint was forwarded to our counsel on December 1, 2000. The delayed receipt of the complaint accounts for the lengthy time span between the meeting at issue and the issuance of this opinion.

² In response to a request from Mr. McAllister, the Compliance Board granted the County Board a brief extension of time in which to respond.

³ In his response, Mr. McAllister also suggested that, assuming *arguendo*, had the County Board discussed the matter in question, it would have been engaged in an executive function and the Open Meetings Act would not have applied. *See*, §10-503(a)(1)(i) of the State Government Article, Annotated Code of Maryland. Because it appears that the County Board did not discuss this matter, we need not address whether such a discussion would have been considered an executive function.

violate the Open Meetings Act as alleged in your complaint. We would be remiss, however, if we did not address the adequacy of the County Board's explanation justifying the closed session that it in fact conducted on that date.

Before a public body meets in closed session subject to the Open Meetings Act, the presiding officer is required to "make a written statement of the reason for closing the meeting, including a citation of the authority under [§10-508], and a *listing of the topics to be discussed*." State Government Article, §10-508(d)(2)(ii) (emphasis supplied). The Compliance Board has repeatedly described the required level of explanation as follows:

While the Act surely does not require that a public body disclose in the written statement sensitive information that the Act permits to be discussed in closed session, the written statement ought to apprise those in attendance of the basis for the invocation of the particular exception that is cited. ... While the level of detail necessary will vary from one meeting to the next, the Compliance Board believes that the use of an uninformative boilerplate statement of reasons does not comply [with the Act.]

Compliance Board Opinion 93-2 (January 7, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 23, 26. *See also* Compliance Board Opinion 96-12 (November 20, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 191, 193 (reference to "personnel matters," merely repeating statutory exception, was inadequate); Compliance Board Opinion 97-10 (May 27, 1997), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 242, 243 (bare reference to "possible litigation" would ordinarily be insufficient).

Prior to holding a closed meeting on April 11, 2000, a statement modeled on a form suggested by the Office of Attorney General was completed in the County Board's effort to comply with the Act. *See*, Office of the Maryland Attorney General, *Open Meetings Act Manual* Appendix C (4th ed. 2000). The County Board cited §10-508(a)(1) and (9) as legal authority to close its meeting. However, under the section titled "topics to be discussed," the description consists of "[n]egotiations" and "[p]ersonnel". In our view, this description amounts to "uninformative boilerplate," inconsistent with the requirements of the Act. Therefore, we encourage the County Board to review the level of documentation it provides the public in explaining the basis for meeting in closed session.

IV**Conclusion**

Based on the information before us, we find no evidence that the County Board held a closed session about the topic identified in your complaint. Because the alleged discussion apparently did not occur, we find no violation as alleged in your complaint. We encourage the County Board, however, to review its practice concerning disclosure of the topics to be discussed in a closed session.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin

Tyler G. Webb

*Chairman Walter Sondheim, Jr. did not participate in the preparation or approval of this opinion.